

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN SCHWENDIMAN : CIVIL ACTION
 :
 v. :
 :
 DAVID CLEE, JR., et al. : NO. 97-6633

MEMORANDUM AND ORDER

HUTTON, J.

June 17, 1998

Presently before the Court are the Plaintiff's Motion for Inspection Pursuant to Rule 34 (Docket No. 7) and the Defendants' Motion for a Protective Order (Docket No. 6). For the reasons stated below, the plaintiff's Motion is **DENIED** and the defendants' Motion is **DENIED AS MOOT**.

I. BACKGROUND

The plaintiff, John Schwendiman ("Schwendiman"), alleges the following facts. On February 21, 1997, the plaintiff arrived at the Bensalem Township Police Department in order to retrieve his brother, Dennis Schwendiman, who earlier had been arrested by Bensalem Township police officers for driving under the influence of alcohol. Pl.'s Compl. ¶ 6. After speaking to his brother, the plaintiff entered the police station to request that the officers perform a breathalyzer test on Dennis Schwendiman. Id. ¶ 7. Defendants Dale Richardson ("Richardson") and David Clee, Jr. ("Clee"), both Bensalem Township police officers, refused the plaintiff's request. Pl.'s Mem. of Law at 3; Pl.'s Compl. ¶ 7.

The plaintiff renewed his request several times, but Clee and Richardson continued to deny it. In fact, Clee became angry and ordered the plaintiff to leave, but the plaintiff refused to do so until the test was conducted. Pl.'s Compl. ¶ 8. Clee and Richardson then grabbed, pushed, and struck the plaintiff several times. Id. ¶¶ 9-11. Moreover, Richardson discharged pepper spray into the plaintiff's face and eyes. Id. ¶ 12. The plaintiff requested a chance to wash his eyes, but Clee and Richardson refused. Id. ¶ 14. Clee and Richardson detained the plaintiff for over an hour before letting him leave. Id. ¶ 15.

On May 10, 1997, the plaintiff initiated the instant action by filing his complaint in the Court of Common Pleas of Bucks County. In his complaint, the plaintiff names the following parties as defendants: 1) Clee; 2) Richardson; and 3) Bensalem Township. The plaintiff seeks damages for violations of his constitutional rights, pursuant to 42 U.S.C. § 1983 (Count I). Moreover, the plaintiff asserts causes of action under the following state law claims: assault and battery (Count II) and intentional infliction of emotional distress (Count III). On October 27, 1997, the defendants removed this action to the United States District Court for the Eastern District of Pennsylvania.

On May 7, 1998, the defendants filed a Motion for a Protective Order, seeking to strike the plaintiff's request for entry upon the premises of the Bensalem Township Police Department.

On May 26, 1998, the plaintiff filed his response to the defendants' motion. Further, the plaintiff filed a Motion for Inspection Pursuant to Rule 34, in support of his request to inspect the police station.

II. DISCUSSION

A. Scope of Discovery

Rule 34 of the Federal Rules of Civil Procedure allows a party to request "entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object of operation thereon, within the scope of Rule 26(b)." Fed. R. Civ. P. 36(a) (emphasis added); see General Instrument Corp. of Delaware v. Nu-Tek Elecs. & Mfg., No. CIV.A.93-3854, 1995 WL 37521, at * 1 (E.D. Pa. Jan. 27, 1995) (discussing application of Rule 34 request for entry upon land). A Rule 34 request must "set forth . . . the items to be inspected and describe each with reasonable particularity." Fed. R. Civ. P. 34(b).

Rule 26(b)(1) of the Federal Rules of Civil Procedure provides that: "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Fed. R. Civ. P. 26(b)(1). Moreover, the scope of discovery is not without its limits, and is "committed to the sound discretion of the trial court." McClain v.

Mack Trucks, Inc., 85 F.R.D. 53, 57 (E.D. Pa. 1979). "The party seeking discovery has the burden of showing clearly that the information sought is relevant to the subject matter of the action and would lead to admissible evidence." Id.

B. The Plaintiff's Motion for Inspection Pursuant to Rule 34

In support of his motion, the plaintiff states the following:

At issue in the case at bar is the reasonableness of the Defendants seizure of Plaintiff and the reasonableness of their refusal to allow him to wash out his eyes or seek medical attention after they sprayed mace in his face. One of the issues no doubt will be the question of how far Plaintiff was dragged or thrown by the Defendants. At issue no doubt will be the reasonableness of not allowing Plaintiff to wash his eyes. At issue will be whether Plaintiff's raising his hands to surrender to the police could be interpreted by the police as a threatening gesture. At issue will be the question of who could have seen the incident and from where the incident could have been viewed. At issue will be the location of the 911 operator and the other officer whose voice is on the 911 tape. Plaintiff seeks to inspect and measure, with his counsel, the rooms where he was assaulted and held at the Defendant Township's police station so that counsel can intelligently question and cross-examine witnesses about what happened at the time of the incident. Plaintiff seeks to photograph, with his counsel and a photographer, the rooms where he was assaulted and held in order that his counsel can properly and adequately present his case to the jury.

Pl.'s Mem. of Law at 14-15.

While the plaintiff claims that the inspection may lead to relevant evidence, his argument is not persuasive. The reasonableness of the defendants' alleged actions is certainly at issue, but the plaintiff fails to explain how an inspection of the police station may lead to relevant evidence on that point. Moreover, while the plaintiff argues that the search is necessary to determine who witnessed the incident, the plaintiff fails to explain how the inspection would reveal this information. Furthermore, considering the discovery procedures outlined in the Federal Rules of Civil Procedure, the majority of the information the plaintiff seeks can easily be uncovered through other discovery devices. See, e.g., Fed. R. Civ. P. 26(a) (requiring automatic disclosure of certain witnesses, documents, and experts). Thus, while the plaintiff seeks evidence that is "relevant to the subject matter of the action and would lead to admissible evidence," McClain, 85 F.R.D. at 57, the plaintiff fails to explain how the inspection would yield this information. Accordingly, the plaintiff's motion is denied.

C. The Defendants' Motion for a Protective Order

In their motion, the defendants seek a protective order prohibiting the plaintiff from entering upon the premises of the Bensalem Township Police Department. Because this Court denies the plaintiff's request to do so, the defendants' motion is now moot.

An appropriate Order follows.

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O R D E R

AND NOW, this 17th day of June, 1998, upon consideration of the Plaintiff's Motion for Inspection Pursuant to Rule 34 (Docket No. 7), IT IS HEREBY ORDERED that the plaintiff's Motion is **DENIED**.

IT IS FURTHER ORDERED that the Defendants' Motion for a Protective Order (Docket No. 6) is **DENIED AS MOOT**.

BY THE COURT:

HERBERT J. HUTTON, J.